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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,973	07/17/2003	Don Millerd	11371.9	2586
23862	7590	05/04/2006		
NYDEGGER & ASSOCIATES 348 OLIVE STREET SAN DIEGO, CA 92103			EXAMINER WITCZAK, CATHERINE	
			ART UNIT 3767	PAPER NUMBER

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

②

<b>Office Action Summary</b>	<b>Application No.</b> 10/621,973	<b>Applicant(s)</b> MILLERD, DON	
	<b>Examiner</b> Catherine N. Witczak	<b>Art Unit</b> 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/30/2006</u> | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*


The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 10, 11, 13-17, 19 and 20 rejected under 35 U.S.C. 102(e) as being anticipated by Asbaghi (US 6,869,415).

Claims 10, 11, and 17: Asbaghi discloses in Figure 1 a protective device comprising: a substantially tubular shaped holder (12) having a distal (44) and proximal abutment (46); an adapter (36) with the needle (18) mounted thereon; a substantially tubular shaped guard (28) positioned in the lumen of the holder (14) for reciprocal axial movement over the needle; a cantilevered tab (50) formed on the guard (28) deflectable from a stressed configuration for engagement with the distal abutment (44) into an unstressed configuration wherein the cantilevered tab is flush with the outer surface of the guard (as seen in Figure 3A); a spring (38); and an extension limiter (52) formed on the guard and engageable with the proximal abutment (46). Asbaghi further discloses the guard (28) moveable over the needle (18) from an initial position wherein the cantilevered tab (50) is urged against the first abutment (44) and a distal portion of the needle extends from the guard, followed by a movement of the guard (28) in the second direction to a retracted position wherein the cantilevered tab is released from the first abutment (44) for transition to its unstressed configuration with further exposure of the needle (as seen in Figure 3A), and a

  
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subsequent movement of the guard in the first direction to a final position wherein the guard covers the distal portion of the needle (18) and the extension limiter (52) is engaged with the proximal abutment (46) to prevent an uncovering of the distal portion of the needle.

Claims 13, 14, and 19: Asbaghi disclose in Figures 2 and 3 the holder (12) having a plurality of longitudinally oriented ribs (44) having detents (42a and 42b) for engagement with the adapter, and the guard (28) having a pair of axially oriented ridge (40a and 40b).

Claims 15 and 20: Asbaghi disclose in Figure 2 the needle (30) having a beveled edge and the adapter (36) having a pair of prongs straddling the ribs (44).

Claim 16: Asbaghi discloses in column 4, lines 1-7 that the needle is an aspiration needle.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asbaghi as modified by DeMichele et al (US 2001/0044607).

Asbaghi discloses the claimed invention except for there being a needle cap to cover the needle. DeMichele et al teaches that it is known to use a needle cap (26) as set forth in Figure 1. DeMichele et al do not explicitly state why a needle cap is used, but it appears that it is used to prevent the needle from

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becoming contaminated prior to use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Asbaghi with a needle cap as taught by DeMichele et al , since such a modification would provide the system with a cap for preventing the needle from becoming contaminated prior to use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cw



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C.  
KEVIN SIRMONS  
PRIMARY EXAMINER

